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Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Monaco, Netherlands, Poland, Portugal, Romania, Spain, Sweden and United Kingdom of Great Britain and Northern Ireland: draft resolution

Situation of human rights in the Democratic Republic of the Congo

The General Assembly,

Reaffirming that all Member States are required to promote and protect human rights and fundamental freedoms as stated in the Charter of the United Nations, the Universal Declaration of Human Rights,[1] the International Covenants on Human Rights[2] and other applicable human rights instruments,

Aware that the Democratic Republic of the Congo is a party to the International Covenant on Civil and Political Rights,[2] the International Covenant on Economic, Social and Cultural Rights,[2] the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[3] the International Convention on the Elimination of All Forms of Discrimination against Women,[4] the International Convention on the Elimination of All Forms of Racial Discrimination,[5] the Convention on the Rights of the Child,[6] the Geneva Conventions of 12 August 1949 for the protection of victims of war[7] and the first Additional Protocol thereto of 1977,[8] as well as the African Charter on Human and Peoples' Rights,[9]

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[1] Resolution 217 A (III).
[2] Resolution 2200 A (XXI), annex.
[3] Resolution 39/46, annex.
[4] Resolution 34/180, annex.
[5] Resolution 2106 A (XX), annex.
[6] Resolution 44/25, annex.
[7] United Nations, *Treaty Series*, vol. 75, Nos. 970-973.
[8] Ibid., vol. 1125, No. 17512.
[9] Ibid., vol. 1520, No. 26363.

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Taking note of General Assembly resolution 55/117 of 4 December 2000, and of the previous resolutions of the General Assembly and the Commission on Human Rights on this subject, and of Security Council resolutions 1304 (2000) of 16 June 2000, 1332 (2000) of 14 December 2000, 1341 (2001) of 22 February 2001, 1355 (2001) of 15 June 2001 and 1376 (2001) of 9 November 2001,

Recalling the Lusaka Ceasefire Agreement,[10] as well as the Kampala disengagement plan[11] and the Harare sub-plans for disengagement and redeployment,

Concerned at all violations of human rights and international humanitarian law in the territory of the Democratic Republic of the Congo by parties to the conflict, as noted in the reports of the Special Rapporteur,[12] including acts of and incitement to ethnic hatred and violence,

Noting that the promotion and the protection of human rights for all are essential for achieving stability and security in the region and will contribute to the creation of the environment necessary for cooperation among States in the region,

Reiterating its support for the development of the inter-Congolese dialogue which, requiring the cooperation and full participation of all the Congolese parties, is an essential process for the future of the Democratic Republic of the Congo and of the entire region,

Acknowledging the need to expand the presence and full participation of women in the peace process,

Recalling its decision to request the Special Rapporteurs on the situation of human rights in the Democratic Republic of the Congo and on extrajudicial, summary or arbitrary executions and a member of the Working Group on Enforced or Involuntary Disappearances to carry out a joint mission of investigation in the Democratic Republic of the Congo, while regretting that the security situation in that country is still preventing such a mission,

Encouraging the Government of the Democratic Republic of the Congo to give effect to its earlier commitment, including to the United Nations High Commissioner for Human Rights, to restore and reform its judicial system, in accordance with the relevant international conventions, and to put an end to the trying of civilians by the Military Court,

1. *Welcomes*:

(a) The meeting between the Political Committee for the Lusaka Ceasefire Agreement[10] and the Security Council on 9 November 2001, and urges all parties to take the necessary measures to implement phase III of the deployment of the United Nations Organization Mission in the Democratic Republic of the Congo;

(b) The reports of the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo;[12]

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[10] S/1999/815, annex.

[11] See S/2000/330 and Corr.1, paras. 21 to 28.

[12] E/CN.4/2001/40/Add.1 and A/56/327.

(c) The visits made by the Special Rapporteur to the Democratic Republic of the Congo from 11 to 21 March 2001 and from 20 July to 1 August 2001 for the purpose of evaluating the existing situation in the country;

(d) The holding in Gaborone from 20 to 24 August 2001 of the preparatory meeting for the inter-Congolese dialogue and the signature by all the parties concerned of a declaration of commitment providing for the release of all prisoners of conscience, the free movement of goods and persons and the protection of the civilian populations;

(e) The effective release by the Government of the Democratic Republic of the Congo of several human rights defenders;

(f) Law No. 001 of 17 May 2001 on political parties and the promise of openness and tolerance which it offers, inviting the Government to continue on that path and to enforce the law fully for the benefit of all political tendencies in the Democratic Republic of the Congo;

(g) The action undertaken by the human rights field office in the Democratic Republic of the Congo, while encouraging the Government to collaborate and further strengthen its cooperation with the office;

(h) The statements by the President of the Democratic Republic of the Congo to the effect that child soldiers would in future no longer be recruited, as well as the commitment made by the Government of the Democratic Republic of the Congo to cooperate with the United Nations organs and non-governmental organizations in order to ensure the demobilization and reintegration of child soldiers, as well as the measures taken by the Government of the Democratic Republic of the Congo to that end, while urging other parties to the conflict to do the same;

(i) The release and repatriation carried out under the auspices of the International Committee of the Red Cross in the Democratic Republic of the Congo, in conformity with international humanitarian law, of persons at risk because of their ethnic origin and of prisoners of war;

(j) The continuing presence and wider deployment of the United Nations Organization Mission in the Democratic Republic of the Congo in support of the implementation of the Lusaka Ceasefire Agreement;

(k) The commitments made by President Kabila to improve the human rights situation, particularly those given when he attended the fifty-seventh session of the Commission on Human Rights, while encouraging him to give concrete effect to those commitments;

(l) The organization of a National Human Rights Conference, held in June 2001, while expressing the hope that its results will lead to an improvement of the situation of human rights in the Democratic Republic of the Congo;

(m) The consent of President Kabila to the Special Rapporteur's plan to undertake, within the framework of his mandate and in the coming months, an initial joint mission to investigate the massacres in the province of South Kivu and other atrocities referred to by the Special Rapporteur in his latest and previous reports, with a view to bringing to justice those responsible and reporting thereon to the General Assembly and the Commission on Human Rights;

2. *Expresses its concern* at:

(a) The resumption of fighting in the eastern part of the country and the adverse impact of the conflict on the situation of human rights and its severe consequences for the security and well-being of the civilian population throughout the territory of the Democratic Republic of the Congo, including the increase in the number of refugees and internally displaced persons, particularly in the eastern part of the country;

(b) The missed opportunity of the inter-Congolese dialogue scheduled to be held in Addis Ababa on 15 October 2001;

(c) The situation of human rights in the Democratic Republic of the Congo, and particularly in the zones held by the armed rebels and under foreign occupation, and the persistent violations of human rights and of international humanitarian law, including the atrocities against the civilian populations, usually committed with complete impunity, while emphasizing in this regard that all the forces present in the territory of the Democratic Republic of the Congo should be held accountable for the violations of human rights in the territories under their control. It condemns in particular:

(i) All the massacres and atrocities still being committed throughout the territory of the Democratic Republic of the Congo and in particular in the zones held by the armed rebels and under foreign occupation, particularly Bugobe, Nyatende, Kamisimbi, Lurhala, Nyangesi, Biambwe, Nbingi, Bunyatenge, Kaghumo, Banyuke, and Kirima, Kalemié, Pweto, Rutshuru, Kibumba, Kimia Kimia, Dungo Mulunga and Kasese Bolanga;

(ii) The occurrences of cases of summary and arbitrary execution, disappearance, torture, arbitrary arrest and detention without trial, including of journalists, opposition politicians, human rights defenders and people who have cooperated with the United Nations mechanisms;

(iii) The numerous instances of rape and sexual violence against women and children, including as a means of warfare;

(iv) The continuing recruitment and use of child soldiers by armed forces and groups, including the enlistment and kidnapping of children throughout the territory of the Democratic Republic of the Congo and particularly in North and South Kivu and in the eastern province;

(v) The sentencing to death and execution of civilians tried before the Military Court, in violation of the obligations assumed by the Democratic Republic of the Congo under the International Covenant on Civil and Political Rights,[2] as well as the prolonged and arbitrary detentions ordered by that Court;

(vi) The death sentences and summary executions by the *Rassemblement congolais pour la démocratie*/Goma;

(vii) The indiscriminate attacks against civilian populations, including against hospitals in the zones held by rebel forces and the zones held by foreign forces;

(d) The conflicts between the Hema and Lendu ethnic groups in the eastern province, where thousands of Congolese have already been killed and where

Uganda, which controls the zone de facto, is responsible for ensuring respect for human rights;

(e) The excessive accumulation and spread of small arms and the distribution, circulation and illicit trafficking of arms in the region and their negative impact on human rights;

(f) The breaches of freedom of expression, opinion, association and assembly throughout the territory of the Democratic Republic of the Congo, in particular in the eastern part of the country;

(g) The harassment and persecution of human rights defenders and other members of civil society;

(h) The acts of intimidation and persecution against representatives of the Churches, as well as the killings of those persons in the eastern part of the country;

(i) The severe insecurity, which seriously hampers the ability of humanitarian organizations to secure access to affected populations, particularly in the zones held by armed rebels and under the control of foreign forces, while condemning the killing of six humanitarian workers of the International Committee of the Red Cross on 26 April 2001 in the eastern part of the Democratic Republic of the Congo, for which those responsible must be brought to justice;

(j) The illegal exploitation of the natural resources of the Democratic Republic of the Congo, demanding that such exploitation should cease and emphasizing that the natural resources of the country should not be used to finance the conflict there;

3. *Urges* all parties to the conflict in the Democratic Republic of the Congo:

(a) To permit the restoration without delay of the sovereignty and territorial integrity of the Democratic Republic of the Congo, in accordance with the Lusaka Ceasefire Agreement and the relevant resolutions of the Security Council;

(b) To implement fully the Lusaka Ceasefire Agreement, including the Kampala plan and the Harare sub-plans, according to the new timetable agreed by the parties at the meeting held on 21 and 22 February 2001 between the Political Committee for the Agreement and the Security Council;

(c) To cease all military and logistic support as well as all strategic collaboration with the armed groups, particularly those operating in the eastern part of the Democratic Republic of the Congo;

(d) To do everything possible to create the prerequisites for further meetings with a view to advancing the inter-Congolese dialogue, with emphasis on ensuring the full participation of women in this process;

(e) To protect human rights and to respect international humanitarian law, in particular, as applicable to them, the Geneva Conventions of 12 August 1949 for the protection of victims of war[7] and the Additional Protocols thereto of 1977,[13] the Hague Convention respecting the Laws and Customs of War on Land of 18 October 1907,[14] the Convention on the Prevention and Punishment of the Crime of

[13] United Nations, *Treaty Series*, vol. 1125, Nos. 17512 and 17513.

[14] See Carnegie Endowment for International Peace, *The Hague Conventions and Declarations of 1899 and 1907* (New York, Oxford University Press, 1915).

Genocide[15] and other relevant provisions of international humanitarian, human rights and refugee law, and in particular to respect the rights of women and children and to ensure the safety of all civilians, including refugees and internally displaced persons, regardless of their origin;

(f) To ensure the safety and freedom of movement of United Nations and associated personnel and to ensure full, safe and unhindered access of humanitarian personnel to all affected populations throughout the territory of the Democratic Republic of the Congo;

(g) To cease all military activity in the Democratic Republic of the Congo which breaches the ceasefire provided for in the Ceasefire Agreement and the Kampala disengagement plan, including the Harare sub-plans, and the relevant resolutions of the Security Council, and urges all foreign forces to withdraw without delay from the territory of the Democratic Republic of the Congo;

(h) To put an immediate end to the recruitment and use of child soldiers, which are in contravention of the international human rights standards, and to extend unreserved cooperation to the United Nations Organization Mission in the Democratic Republic of the Congo, to the United Nations Children's Fund, to the Special Representative of the Secretary-General for Children and Armed Conflict and to the humanitarian organizations in order to ensure the rapid demobilization of child soldiers, their return home and their rehabilitation;

(i) To define and implement all necessary measures to create conditions conducive to the voluntary return, in safety and with dignity, of all refugees and displaced persons and to ensure their fair and lawful treatment;

(j) To authorize access, in complete freedom and security, to the zones which they control in order to permit investigations into violations of human rights and of international human rights law;

(k) To cooperate fully with the National Commission responsible for investigating allegations concerning the massacre of a large number of refugees and displaced persons in the Democratic Republic of the Congo, as well as with the Secretary-General and the United Nations High Commissioner for Human Rights, in considering the allegations in question, with a view to the submission to the Secretary-General, through the National Commission, of a further progress report on the investigations concerning this matter;

4. *Calls upon* the Government of the Democratic Republic of the Congo to take specific measures in order:

(a) To comply fully with its obligations under international human rights law and to promote and protect human rights and fundamental freedoms, to fulfil its responsibility to protect the human rights of the population in its territory, as well as to take a leading part in efforts to prevent conditions that might lead to further flows of internally displaced persons and refugees within the Democratic Republic of the Congo and at its borders;

(b) To fulfil its commitment to reform and restore the judicial system and, in particular, its declared intention progressively to abolish the death penalty, as well

[15] Resolution 260 A (III).

as to reform military justice, in conformity with the provisions of the International Covenant on Civil and Political Rights;[2]

(c) To put an end to impunity and to fulfil its responsibility to ensure that those responsible for human rights violations and grave breaches of international humanitarian law are brought to justice;

(d) To create, in accordance with its undertakings as stipulated in the Lusaka Ceasefire Agreement, and particularly the articles concerning the inter-Congolese dialogue, conditions that would allow for a democratization process that is genuine and all-inclusive and that fully responds to the aspirations of all people in the country, and to complete the administrative procedures required to permit activities by political parties and prepare for the holding of democratic, free and transparent elections;

(e) To ensure full respect for freedom of opinion and expression, including freedom of the press in relation to all types of mass media, as well as freedom of association and assembly;

(f) To remove the restrictions that still affect the work of non-governmental organizations and to promote human rights awareness, particularly by strengthening cooperation with civil society, including all human rights organizations;

(g) To continue to facilitate and strengthen further its cooperation with the human rights field office in the Democratic Republic of the Congo;

(h) To cooperate fully with the International Criminal Tribunal for Rwanda in ensuring that all those responsible for the crime of genocide, crimes against humanity and other violations of article 3 of both the Geneva Conventions of 12 August 1949 and Additional Protocol II thereto[16] are brought to justice in accordance with international principles of due process;

(i) To continue to facilitate the creation of the necessary prerequisites for the deployment, in conditions of security, of the United Nations Organization Mission in the Democratic Republic of the Congo and to guarantee the safety and freedom of movement of its personnel and associated personnel;

5. *Decides*:

(a) To continue to examine the situation of human rights in the Democratic Republic of the Congo and to request the Special Rapporteur to report to the General Assembly at its fifty-seventh session, incorporating a gender perspective;

(b) To request the Special Rapporteurs on the situation of human rights in the Democratic Republic of the Congo and on extrajudicial, summary or arbitrary executions and a member of the Working Group on Enforced or Involuntary Disappearances to undertake, if appropriate in cooperation with the National Commission responsible for investigating violations of human rights and breaches of international humanitarian law in the Democratic Republic of the Congo (ex-Zaire) between 1996 and 1997, a joint mission to investigate all the massacres perpetrated in the territory of the Democratic Republic of the Congo, particularly the massacres committed in the province of South Kivu and other atrocities referred to by the Special Rapporteur in his latest and previous reports on the situation of

[16] United Nations, *Treaty Series*, vol. 1125, No. 17513.

human rights in the Democratic Republic of the Congo, with a view to bringing to justice those responsible, and to report on this matter to the General Assembly at its fifty-seventh session and to the Commission on Human Rights at its fifty-eighth session;

(c) To request the Secretary-General to give the Special Rapporteur and the joint mission all necessary assistance to enable them fully to discharge their mandate;

(d) To request the High Commissioner to provide the technical skills needed by the joint mission in order to discharge its mandate;

(e) To request the international community to extend support to the human rights field office in the Democratic Republic of the Congo, particularly in order:

(i) To expand its participation in technical cooperation programmes, advisory services and activities to increase awareness of human rights, particularly by supporting the efforts made by the Government of the Democratic Republic of the Congo to strengthen the judicial system;

(ii) To increase its support to non-governmental organizations defending human rights in the Democratic Republic of the Congo, to continue and develop cooperation with them and to facilitate the activities of the joint mission, particularly through financial support.